

COPY

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and)

Complaint Against)

STELLA YI CHOU, M.D.,)
PAUL E. CUTARELLI, M.D.,)
& ANAMIKA JAIN, M.D.,)

Respondents.)

Case No. 08-29655-1

NO.

FILED October 30, 2008

[Signature]
CLERK OF THE BOARD

COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners, composed of Charles N. Held, M.D., Chairman, Benjamin Rodriguez, M.D., Member, and Jean Stoess, M.A., Member, by and through Lyn E. Beggs, General Counsel for the Nevada State Board of Medical Examiners, having a reasonable basis to believe that Stella Yi Chou, M.D., hereinafter referred to as Dr. Chou, Paul E. Cutarelli, M.D., hereinafter referred to as Dr. Cutarelli, and Anamika Jain, M.D., hereinafter referred to as Dr. Jain, have violated the provisions of NRS Chapter 630, hereby issues its formal Complaint, stating the Investigative Committee's charges and allegations, as follows:

1. Respondent is licensed in active status to practice medicine in the State of Nevada, and at all times alleged herein, was so licensed by the Nevada State Board of Medical Examiners, pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes.

2. On October 5, 2006, Valley Eye Center, 2931 Tenaya Way, Suite 204, in Las Vegas, Nevada opened as a practice of medicine providing refractive surgery to correct refractive errors of the eye. The practice of Valley Eye Center was limited exclusively to the providing of refractive eye surgery.

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

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1 3. The owner and administrator of the facility is purported to be Anamika Jain, M.D.
2 Dr. Anamika Jain is married to Vikas Jain. Dr. Anamika Jain is not an ophthalmologist.
3 Dr. Anamika Jain's specialty is shown in the Board's records to be Rehabilitation Medicine.

4 4. Vikas Jain had been licensed as a physician, specializing in ophthalmology, in Ohio,
5 New York, and Florida. On November 14, 2005, the State Medical Board of Ohio revoked Vikas
6 Jain's license to practice medicine. The Ohio Board's order found, among other things, that Vikas
7 Jain had committed ophthalmological malpractice upon 22 specific patients, resultant from his
8 failure to properly preoperatively assess the patients, resulting in ophthalmological surgical errors that
9 caused harm to the 22 patients. Subsequent to the revocation of his license by the State Medical
10 Board of Ohio, the medical licenses of Vikas Jain in New York and Florida were surrendered after
11 both states filed disciplinary proceedings against him based upon the Ohio action. Vikas Jain has no
12 active license to practice medicine in any state in the United States. Vikas Jain has not applied for a
13 license to practice medicine in Nevada.

14 5. In October 2006, Dr. Chou began performing refractive eye surgeries at Valley Eye
15 Center. Dr. Chou lives in Utah and maintains no residence or presence in Nevada except that she
16 performed surgeries at Valley Eye Center. Dr. Chou was not employed by Valley Eye Center;
17 instead, Dr. Chou is an employee of CompHealth, a physician recruiting and temporary placement
18 service based out of Salt Lake City, UT.

19 6. The normal practice at Valley Eye Center was that on Mondays, Tuesdays,
20 Wednesdays, and Thursdays, Vikas Jain would see patients at Valley Eye Center. Vikas Jain
21 introduced himself and accustomed each patient to calling him "Dr. Ken." In his role as Dr. Ken,
22 Vikas Jain would perform preoperative assessment and measurements of patients' eyes in
23 preparation for the patients' refractive eye surgery. Dr. Chou was not present at Valley Eye Center
24 when Vikas Jain performed his assessments and measurements on patients' eyes, and she exerted no
25 supervisory oversight or control over the work of Vikas Jain. On Thursday evenings, someone from
26 Valley Eye Center would pick up Dr. Chou at the airport and drive her to her hotel room. Dr. Chou
27 would be presented with a pile of patient files for the surgeries she would perform at Valley Eye
28 Center. All of the preoperative assessment and measurements contained in the patient files would

1 have been performed by Vikas Jain, a/k/a Dr. Ken. (At some time later in Dr. Chou's work at Valley
2 Eye Center, some preoperative assessments and measurements were performed by another staff
3 member of Valley Eye Center, Carrie Cipollini, who also was not a licensed physician.) The next
4 morning, always a Friday, Dr. Chou would perform the eye surgeries using a Nidek machine
5 provided by Valley Eye Center. Nidek machines require the use of precise measurements to assure
6 the proper outcome of the surgery. The measurements Dr. Chou would program into the Nidek
7 machine would be the measurements provided to her by Vikas Jain. Dr. Chou performed no
8 independent assessment or measurement of any patients' eyes, and, thus, would perform the eye
9 surgeries based solely upon the assessment and measurements provided to her by Vikas Jain or
10 Ms. Cipolinni. Dr. Chou would perform a large number of surgeries all day on Fridays and would
11 perform additional surgeries on Saturdays. At some time on each Saturday, Dr. Chou would fly back
12 to her home in Utah. All postoperative care would be provided by Vikas Jain.

13 7. Pursuant to this normal mode of practice, on February 8, 2007, Dr. Chou performed
14 refractive eye surgery upon both eyes of Patient A. Prior to the surgery, Dr. Chou did no
15 examination of Patient A's eyes. The only guidance for the surgery was the assessment and
16 measurements on Patient A conducted by Vikas Jain.

17 CAUSES OF ACTION RELATED TO DR. CHOU

18 First Cause of Action

19 8. NAC 630.040 defines malpractice as failure of a physician, in treating a patient, to
20 use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.

21 9. NRS 630.301(4) provides that malpractice is grounds for initiating disciplinary action
22 against a licensee.

23 10. Dr. Chou failed to use the reasonable care, skill, or knowledge ordinarily used under
24 similar circumstances, by physicians in good standing practicing ophthalmology in Nevada when she
25 performed the refractive eye surgery upon Patient A in the manner described. As a consequence of
26 Dr. Chou's failure to use the reasonable care, skill, or knowledge ordinarily used under similar
27 circumstances, Patient A suffered on-going pain around the left eye and occipital bone.

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1 11. Dr. Chou's treatment of Patient A as alleged constitutes a violation of
2 NRS 630.301(4) and thus she is subject to disciplinary action being taken against her.

3 **Second Cause of Action**

4 12. Pursuant to the normal mode of practice at Valley Eye Center described in paragraph
5 #6 herein, on January 12, 2007, Dr. Chou performed refractive eye surgery upon both eyes of Patient
6 B. Prior to the surgery, Dr. Chou did no examination of Patient B's eyes. The only guidance for the
7 surgery was the assessment and measurements on Patient B conducted by Vikas Jain.

8 13. Dr. Chou failed to use the reasonable care, skill, or knowledge ordinarily used under
9 similar circumstances by physicians in good standing practicing ophthalmology in Nevada when she
10 performed the refractive eye surgery upon Patient B in the manner described. As a consequence of
11 Dr. Chou's failure to use the reasonable care, skill, or knowledge ordinarily used under similar
12 circumstances, Patient B suffered continuing eye issues including vision problems.

13 14. Dr. Chou's treatment of Patient B as alleged constitutes a violation of
14 NRS 630.301(4) and thus she is subject to disciplinary action being taken against her.

15 **Third Cause of Action**

16 15. The preoperative assessment and measurement of an eye as well as the determining of
17 the proper correction in preparation for refractive eye surgery constitutes the practice of medicine.

18 16. Dr. Chou knew that neither Vikas Jain nor Ms. Cipollini were physicians licensed in
19 Nevada.

20 17. In performing refractive eye surgeries at Valley Eye Center, Dr. Chou relied solely
21 upon preoperative assessments and measurements made by persons whom Dr. Chou knew were not
22 physicians licensed in Nevada. In so doing, Dr. Chou aided, assisted, and knowingly allowed
23 unlicensed persons, namely Vikas Jain and Ms. Cipollini, to engage in the practice of medicine
24 contrary to the provisions of NRS chapter 630.

25 18. Dr. Chou's aiding, assisting, and knowingly allowing Vikas Jain and Ms. Cippolini to
26 perform preoperative assessments and measurements on patients' eyes, acts which constitute the
27 practice of medicine in Nevada, constituted a violation of NRS 630.305(1)(e) and accordingly
28 Dr. Chou is subject to disciplinary action being taken against her.

Fourth Cause of Action

19. Vikas Jain had had all of his medical licenses revoked as a result of his substandard ophthalmological refractive eye surgery performed upon at least 22 patients in Ohio who had suffered substantial harm resultant from his substandard care. Vikas Jain, therefore, had been found by a board of his peers to be unqualified to perform ophthalmic functions related to refractive surgery.

20. NRS 630.305(1)(f) provides that delegating responsibility for the care of a patient to a person a licensee knows, or has reason to know, is not qualified to undertake that responsibility is grounds for initiating disciplinary action against the licensee.

21. Dr. Chou delegated responsibility for preoperative assessment and measurement of patients' eyes to Vikas Jain, meaning that she delegated responsibility for the care of her patients to a man who was known to be unqualified to be involved in the care of patients seeking refractive eye surgery.

22. Dr. Chou's delegating the responsibility for preoperative assessment and measurement of patients' eyes to Vikas Jain when she knew him to be unqualified to perform such tasks constitutes a violation of NRS 630.350(1)(f).

Fifth Cause of Action

23. NRS 630.301(9) provides that engaging in conduct that brings the medical profession into disrepute is grounds for initiating discipline against a licensee.

24. Dr. Chou's acts averred in this Complaint constitute conduct that brings the medical profession into disrepute, and, thus, constitutes a violation of NRS 630.301(9) for which Dr. Chou is subject to discipline.

Sixth Cause of Action

25. NRS 630.306(7) provides that continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field is grounds for initiating discipline against a licensee.

26. Dr. Chou's acts as averred in this Complaint show a continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians

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1 in good standing practicing in the same specialty or field while engaged in practice at Valley Eye
2 Center for which Dr. Chou is subject to discipline.

3 CAUSES OF ACTION RELATED TO DR. CUTARELLI

4 Seventh Cause of Action

5 27. In June 2008, Dr. Cutarelli began performing refractive eye surgeries at Valley Eye
6 Center. Dr. Cutarelli lives in Colorado and maintains no residence or presence in Nevada except that
7 he performed surgeries at Valley Eye Center. Dr. Cutarelli is not employed by Valley Eye Center;
8 instead, Dr. Cutarelli is an independent contractor with Valley Eye Center.

9 28. The normal practice of Valley Eye Center as described in paragraph #6 herein was
10 also the norm at all times pertinent to Dr. Cutarelli's performance of refractive eye surgeries at
11 Valley Eye Center.

12 29. The preoperative assessment and measurement of an eye in preparation for refractive
13 eye surgery constitutes the practice of medicine in Nevada.

14 30. Dr. Cutarelli knew that Vikas Jain, a/k/a Dr. Ken, was not a physician licensed in
15 Nevada.

16 31. In performing refractive eye surgeries at Valley Eye Center, Dr. Cutarelli relied solely
17 upon preoperative assessments and measurements made by a person whom Dr. Cutarelli knew was
18 not a physician licensed in Nevada. In so doing, Dr. Cutarelli aided, assisted, and knowingly allowed
19 an unlicensed person, namely Vikas Jain, a/k/a Dr. Ken, to engage in the practice of medicine
20 contrary to the provisions of NRS chapter 630.

21 32. Dr. Cutarelli's aiding, assisting, and knowingly allowing Vikas Jain, a/k/a to perform
22 preoperative assessments and measurements on patients' eyes, acts which constitute the practice of
23 medicine in Nevada, constitute a violation of NRS 630.305(1)(e) and thus Dr. Cutarelli is subject to
24 discipline.

25 Eighth Cause of Action

26 33. Vikas Jain had had all of his medical licenses revoked as a result of his substandard
27 ophthalmological refractive eye surgery performed upon at least 22 patients in Ohio who had suffered

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1 substantial harm resultant from his substandard care. Vikas Jain, therefore, had been found by a
2 board of his peers to be unqualified to perform ophthalmic functions related to refractive surgery.

3 34. In addition to constituting the aiding and assisting of unlicensed practice,
4 Dr. Cutarelli's delegating responsibility for preoperative assessment and measurement of patients'
5 eyes also meant that he delegated responsibility for the care of his patients to Vikas Jain, who had
6 already shown himself to be unqualified to be involved in the care of patients seeking refractive eye
7 surgery.

8 35. Dr. Cutarelli's delegating the responsibility for preoperative assessments and
9 measurements of patients' eyes to Vikas Jain when he knew him to be unqualified to perform such
10 tasks constituted the violation of NRS 630.350(1)(f).

11 Ninth Cause of Action

12 36. Dr. Cutarelli's acts averred in this Complaint constituted conduct that brings the
13 medical profession into disrepute, and, thus, constituted a violation of NRS 630.301(9).

14 37. Dr. Cutarelli's acts averred in this Complaint constitute conduct that brings the
15 medical profession into disrepute, and, thus, constitutes a violation of NRS 630.301(9) for which
16 Dr. Cutarelli is subject to discipline.

17 Tenth Cause of Action

18 38. NRS 630.306(7) provides that continual failure to exercise the skill or diligence or
19 use the methods ordinarily exercised under the same circumstances by physicians in good standing
20 practicing in the same specialty or field is grounds for initiating discipline against a licensee.

21 39. Dr. Cutarelli's acts as averred in this Complaint show a continual failure to exercise
22 the skill or diligence or use the methods ordinarily exercised under the same circumstances by
23 physicians in good standing practicing in the same specialty or field while engaged in practice at
24 Valley Eye Center for which Dr. Cutarelli is subject to discipline.

25 CAUSES OF ACTION REGARDING DR. ANAMIKA JAIN

26 Eleventh Cause of Action

27 40. Dr. Anamika Jain is the wife of Vikas Jain and was married to Vikas Jain throughout
28 all of the time in which Vikas Jain went through the legal proceedings that ultimately resulted in the

1 revocation of all medical licenses he had held and knew that he did not hold a Nevada license to
2 practice medicine. Therefore, Dr. Anamika Jain knew that Vikas Jain was not licensed to practice
3 medicine in any state.

4 41. All of the publicly available documents show Dr. Anamika Jain as the sole owner,
5 officer, and principal for Valley Eye Center. Dr. Anamika Jain employed Vikas Jain at Valley Eye
6 Center and knew of and condoned all of Vikas Jain's activities at Valley Eye Center. For example,
7 Dr. Anamika Jain knew and condoned Vikas Jain's performing of preoperative assessment and
8 measurement of patients' eyes in preparation for subsequent surgery by Dr. Chou and Dr. Cutarelli,
9 which procedure Dr. Anamika Jain knew or should have known constituted the practice of medicine
10 in Nevada. Dr. Anamika Jain knew and condoned Vikas Jain's representations of himself as
11 "Dr. Ken." Dr. Anamika Jain knew and condoned that Valley Eye Center allowed Ms. Cipollini to
12 perform preoperative assessment and measurement of patients' eyes.

13 42. The preoperative assessment and measurement of an eye in preparation for refractive
14 eye surgery constitutes the practice of medicine in Nevada.

15 43. Dr. Anamika Jain knew that neither Vikas Jain nor Ms. Cipollini were physicians
16 licensed in Nevada.

17 44. In allowing the performing of refractive eye surgeries at Valley Eye Center where she
18 knew that the ophthalmologist performing the procedure (either Dr. Chou or Dr. Cutarelli) were
19 relying solely upon preoperative assessments and measurements made by persons who Dr. Anamika
20 Jain knew were not physicians licensed in Nevada, Dr. Anamika Jain aided, assisted, and knowingly
21 allowed unlicensed persons, namely Vikas Jain and Ms. Cipollini, to engage in the practice of
22 medicine contrary to the provisions of NRS chapter 630.

23 45. Dr. Anamika Jain's aiding, assisting, and knowingly allowing Vikas Jain and
24 Ms. Cipollini to perform preoperative assessments and measurements on patients' eyes, acts which
25 constitute the practice of medicine in Nevada, constituted a violation of NRS 630.305(1)(e).

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Twelfth Cause of Action

46. Vikas Jain had had all of his medical licenses revoked as a result of his substandard ophthalmological refractive eye surgery performed upon at least 22 patients in Ohio who had suffered substantial harm resultant from his substandard care. Vikas Jain, therefore, had been found by a board of his peers to be unqualified to perform ophthalmic functions related to refractive surgery.

47. In addition to constituting the aiding and assisting of unlicensed practice, Dr. Anamika Jain's delegating responsibility for preoperative assessment and measurement of patients' eyes also meant that she delegated responsibility for the care of Valley Eye Center patients to Vikas Jain, who has already shown himself to be unqualified to be involved in the care of patients seeking refractive eye surgery.

48. Dr. Anamika Jain's delegating the responsibility for preoperative assessment and measurement of patients' eyes to Vikas Jain when she knew him to be unqualified to perform such tasks constituted the violation of NRS 630.350(1)(f).

Thirteenth Cause of Action

49. Dr. Anamika Jain's acts averred in this Complaint constituted conduct that brings the medical profession into disrepute, and, thus, constituted a violation of NRS 630.301(9).

50. Dr. Anamika Jain's acts averred in this Complaint constitute conduct that brings the medical profession into disrepute, and, thus, constitutes a violation of NRS 630.301(9) for which Dr. Jain is subject to discipline.

WHEREFORE, the Investigative Committee prays:

1. That the Nevada State Board of Medical Examiners fix a time and place for a formal hearing;

2. That the Nevada State Board of Medical Examiners give Respondents notice of the charges herein against them, the time and place set for the hearing, and the possible sanctions against them;

3. That the Nevada State Board of Medical Examiners determine what sanctions it determines to impose for the violation or violations committed by Respondents; and

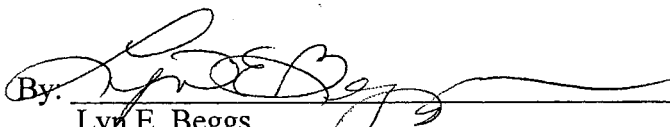
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1 4. That the Nevada State Board of Medical Examiners make, issue and serve on
2 Respondents its findings of facts, conclusions of law and order, in writing, that includes the
3 sanctions imposed; and

4 5. That the Nevada State Board of Medical Examiners take such other and further
5 action as may be just and proper in these premises.

6 DATED this 30th day of October, 2008.

7
8 THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

9
10 By: 
11 Lyn E. Beggs
12 General Counsel and Attorney for the Investigative Committee

VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF DOUGLAS)

CHARLES N. HELD, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate, and correct.

DATED this 3rd day of October, 2008.



CHARLES N. HELD, M.D.

CERTIFICATE OF MAILING

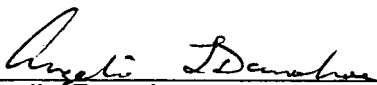
I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on the 30th day of October 2008, I served a file copy of the COMPLAINT, NOTICE OF PREHEARING & HEARING, PATIENT DESIGNATION, by mailing via USPS certified return receipt to the following:

Stella Yi Chou, M.D.
c/o Peter Stirba, Esq.
Stirba & Associates
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Paul E. Cutarelli, M.D.
4875 S. Monaco #201
Denver, CO 80237

Dated this 30th day of October 2008.



Angelia Donohoe
Legal Assistant